

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Criminal Division – Felony Branch**

UNITED STATES OF AMERICA

vs.

TERRY JOHNSON

Case No.: 2011 CF1 24796

Judge Herbert Dixon

Sentencing: May 8, 2013

GOVERNMENT'S MEMORANDUM IN AID OF SENTENCING

The United States, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits the following memorandum to assist the Court in fashioning an appropriate sentence in this case.

I. Sentencing Recommendation

At the conclusion of a jury trial on March 8, 2013, the defendant was found guilty of four counts for his role in the October 26, 2011, killing of Andre Wiggins in the 5200 block of Clay Street NE, in Washington, DC. The jury found the defendant guilty of 1) Second Degree Murder While Armed; 2) Possession of a Firearm during a Crime of Violence; 3) Unlawful Possession of a Firearm; and 4) Carrying a Pistol Without a License (by a convicted felon). As a result of the jury's finding the defendant guilty of Second Degree Murder while Armed, the defendant, Terry Johnson, faces a statutory maximum penalty of 40 years incarceration and a mandatory minimum penalty of 5 years incarceration. After much consideration and deliberation, the government recommends that Terry Johnson be sentenced to a minimum term of imprisonment at the high end of the sentencing guidelines for

each of his offenses.¹ Specifically, the government requests a sentence not less than 25 years incarceration. This is a sentence that the defendant has earned and that justice demands based on the nature of his offenses, the defendant's criminality, and the lack of any mitigation.

II. Nature of Offenses

The murder of Andre Wiggins was a senseless act of revenge. Although the jury's verdict reduced the defendant's culpability from First Degree to Second Degree Murder, the defendant's planning and lack of remorse cannot be ignored and should be considered in the fashioning of his sentence. In this case, notwithstanding the defendant's anger at the decedent, neither the defendant nor any other person was in any immediate danger or under the threat of danger when he brutality executed the decedent. The defendant warned his ex-girlfriend to stay away from the ultimate crime scene, armed himself, and then laid in wait for the decedent as he walked over Clay Street to his own home on Division Ave. It was there that the defendant emerged from hiding, took aim and shot at Andre Wiggins multiple times, hitting him twice, and killing him.

Following the murder, the defendant fled back to his own safe-haven at his family home on Field Place NE. As evidenced by the cell phone records at trial, the

¹ The government concurs with each of the guideline calculations set forth in the Pre-Sentence Report except for the calculation for Count (4) of the indictment – Carrying a Pistol without a License. By the government's calculations, the upper end of the guideline range would be 56 months instead of 28 months (two times the upper number), considering the defendant's conviction for Carrying a Pistol Without a License - having previously been convicted of a felony. See D.C. Code § 4504(a), DCVSG App. H § II(1).

defendant left his family home shortly before the murder, moved in the direction of Clay Street NE and then essentially went off the grid right at the time of the murder. He did not appear again in cell phone records until approximately 10 minutes after the murder and he was back in the vicinity of his family home.

A. The Motive for the Killing

As evidenced at trial, there was an ongoing feud between the Terry Johnson and Andre Wiggins, all apparently sparked by their mutual interest in the same woman. That feud resulted in persistent violent threats by both the defendant and the decedent against one another. The feud culminated on October 26, 2011 when the mother of one of the defendant's children reported to the defendant and his mother that she had been followed by the decedent while walking their child to school. This report set off a series of phone calls where the defendant sought to confirm the report and to ensure that the woman and child would be no where near the crime scene when the defendant planned to exact his revenge.

B. The Defendant's Planning

The defendant sought to prove his might on the morning of October 26. As demonstrated by the trial evidence, the defendant instructed Myriah Simmons to not return to the Clay Street area after she informed him of the alleged following incident by the decedent. Velda Bomar testified that she saw a man – who the jury concluded was the defendant - standing in an alley, “peeking, as if waiting on somebody,” with his hair pinned up and covering his face with a mask. After the

shooting, she saw the defendant run in the same direction from whence he came and it was then that she saw the murder weapon at the defendant's side.

Although the evidence of the defendant's actions after the murder were not presented to the jury, this Court can consider them for sentencing. Before and after the murder, the defendant made a series of phone calls to his mother, Shannon Johnson, and other friends and family and instructed them to move and eliminate any incriminating evidence and to avoid going to the crime scene. Specifically, the defendant called his mother saying "get the stuff out of the house." The government's investigation revealed that after those phone calls, the defendant's family and friends moved and attempted to hide both drugs and ammunition.

III. Applicable Sentencing Principles

Sentences in the District of Columbia must serve three objectives: "(1) [r]eflect the seriousness of the offense and the criminal history of the offender; (2) [p]rovide for just punishment and afford adequate deterrence to potential criminal conduct of the offender and others; and (3) [p]rovide the offender with needed educational or vocational training, medical care, and other correctional treatment. D.C. Code § 24-403.01(a); accord DCVSG § 1.1. To assure "adequate punishment," the Court must give "due regard" to the "(A) [s]eriousness of the offense; (B) [d]angerousness of the offender; (C) [n]eed to protect the safety of the community; (D) [o]ffender's potential for rehabilitation; and (E) [u]se of alternatives to prison, where appropriate. D.C. Code § 3-101 (establishing the District of Columbia Sentencing

and Criminal Code Commission and directing it to implement voluntary sentencing guidelines aimed at achieving enumerated sentencing objectives); see also 18 U.S.C. §§ 3553(a)(1) & (2) (federal sentencing objectives). In fashioning an appropriate sentence, “a judge has wide latitude . . . and may consider any reliable information, from virtually any source, in deciding what sentence to impose.” Saunders v. United States, 975 A.2d 165, 167 (D.C.), cert. denied, 130 S.Ct. 815 (2009); see also Wallace v. United States, 936 A.2d 757, 780 (D.C. 2007) (same, noting that the sentencing court “may rely on evidence not admissible during trial”) (internal quotation marks and citations omitted), cert. denied, 552 U.S. 1310 (2008); Greene v. United States, 571 A.2d 218, 220 (D.C. 1990) (“sentencing court may consider all the evidence presented at trial, including evidence of charges on which appellant was acquitted”); DCVSG § 3.1 (“the court may take into consideration [almost] any factor”).

A. The Defendant’s Criminality

At 23 years old, the defendant’s contacts with the criminal justice system are significant. In addition to multiple arrests and one conviction as a juvenile, the defendant has been arrested seven times prior to this offense and has four prior convictions. The most recent of his prior convictions was for Attempted Possession with Intent to Distribute Cocaine, a felony. In fact, the defendant was on supervised release at the time of this offense, actively seeing his probation officer, drug testing and subject to home visits. Notwithstanding his constant and consistent contact with the police and court system over the five years prior to this offense, the defendant brazenly killed Andre Wiggins in broad daylight.

Two of his earlier convictions involved assaultive conduct, once assaulting a police officer and once assaulting his child's mother. The government notes that the victim of the domestic assault conviction was Myriah Simmons. Myriah Simmons is the woman who told the defendant that she had been followed by the decedent on the morning of the murder. Ms. Simmons told the police and the grand jury that after the murder, she heard the defendant say that he killed the decedent and that she should not return to her house, which was just yards away from the crime scene.

B. The Defendant Poses a Significant Danger to Society

The defendant is a violent, calculating and dangerous person. The murder of Andre Wiggins has proven that the defendant is beyond any degree of rehabilitation and is a threat to society. Within months of being released from jail on a felony drug offense, the defendant graduated to an even more violent approach to his day-to-day life. He clearly has anger and anger resolution issues that have escalated over time to from simple assaults to murder. Clearly, he and the decedent had an ongoing "beef" that bored itself out in acts of violence against one another, and had things gone differently, he might have been the decedent's victim. However, the defendant plays a significant role in fostering this feud. The Court will recall the evidence at trial of the defendant chasing down the decedent with a gun on Dix Street NE just short of one month before the murder; and the defendant's statements to his friends that because the decedent had shot up his car he "had to do what he had to do." If the defendant had decided to withdraw from the back and forth both men's lives might have been spared.

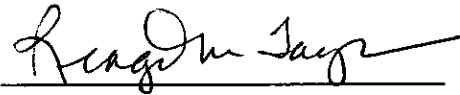
Further demonstrating the defendant's danger to society are his own actions even during the pendency of trial. While being transported to the courthouse, a government witness was outted as a snitch by the defendant and the defendant encouraged other inmates to take action against that witness because of his upcoming testimony. Before that witness could take the stand to provide testimony about the defendant, he was attacked by another inmate and accused of being "hot," which this Court knows (as did the witness) was no compliment. The defendant's blatant disregard for this Court system, the police and for society demonstrates his inability to live and function in the community, and the government respectfully requests that the defendant not be given that opportunity until after he has served a significant term of imprisonment.

IV. CONCLUSION

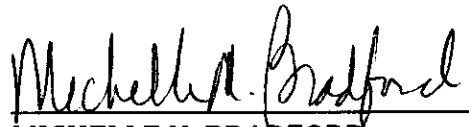
Wherefore, for the reasons stated above, the Government requests that the Court sentence the defendant at the top of the guideline range for each offense for the murder and related weapons offenses.

Respectfully submitted,

RONALD C. MACHEN JR.
UNITED STATES ATTORNEY



REAGAN M. TAYLOR
Assistant United States Attorney
555 Fourth Street NE
Washington, DC 20530
(202) 252-6819
Reagan.Taylor@usdoj.gov



MICHELLE N. BRADFORD
Assistant United States Attorney
555 Fourth Street NE
Washington, DC 20530
(202) 252-7803
Michelle.Bradford@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of this memorandum was served on counsel for the defense, James Whitehead, Esq. and David Maxted, Esq. by email on the 7th of May, 2013.

A handwritten signature in black ink, appearing to read "Reagan M. Taylor", written over a horizontal line.

REAGAN M. TAYLOR
Assistant United States Attorney